

## § 202.113

## 9 CFR Ch. II (1–1–16 Edition)

officer shall order the verbatim transcription of the recording as requested by the party.

(3) Parties to the proceeding who desire copies of the transcript or recording of the oral hearing may make arrangements with the reporter, who will furnish and deliver such copies direct to such parties, upon receipt from such parties of payment for the transcript or recording, at the rate provided by the contract between the reporter and the Department for such reporting service.

(j) *Filing, and presiding officer's certificate, of the transcript or recording.* As soon as practicable after the close of the oral hearing, the reporter shall transmit to the presiding officer the original transcript or recording of the testimony, and as many copies of the transcript or recording as may be required by paragraph (j) of this section for the area offices of the Agency and as may be required for the Washington office of the Agency. At the same time the reporter shall also transmit a copy of the transcript or recording to each party who shall have arranged and paid for it, as provided in paragraph (h) of this section. Upon receipt of the transcript or recording, the presiding officer shall attach to the original transcript or recording a certificate stating that, to the best of the presiding officer's knowledge and belief, the transcript or recording is a true, correct, and complete transcript or recording of the testimony given at the hearing and that the exhibits mentioned in it are all the exhibits received in evidence at the hearing, with such exceptions as the certificate shall specify. Such certificate shall be served on each party and a copy thereof shall be attached to each copy of the transcript or recording received by the presiding officer. In accordance with such certificate the presiding officer shall note, on the original transcript or recording, each correction detailed in such certificate by adding or crossing out (but without obscuring the texts as originally transcribed or recorded) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the presiding officer. The presiding officer shall send the copies of the transcript or recording to

the hearing clerk who shall send them to the Agency.

(k) *Keeping of copies of the transcript or recording.* During the period in which the proceeding has an active status in the Department, a copy of the transcript or recording shall be kept at the area office of the Agency most convenient to the respondent; however, if there are two or more respondents and they are located in different regions, such copy of the transcript or recording shall be kept at the area office of the Agency nearest to the place where the hearing was held. In addition, a copy of the transcript or recording shall be kept at the area office of the Agency most convenient to the complainant. Any such copy shall be available for examination during official hours of business at the area office, but shall remain the property of the Department and shall not be removed from such office.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990; 60 FR 8466, Feb. 14, 1995]

### § 202.113 Rule 13: Written hearing.

(a) *Evidence.* As used in this section, the term "evidence" shall mean depositions, affidavits, or statements under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550, of persons having knowledge of the facts, or documents properly identified by such deposition, affidavit, or statement, or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing, except as provided hereinafter. Testimony on deposition, to the extent credible, shall be given greater weight as evidence, than such affidavits or statements. In a case in which a party, entitled to oral hearing as provided in rule 11, §202.111, withdraws such party's request for oral hearing on condition that only depositions be used if a written hearing is held, only depositions, and documents properly identified therein, shall be made a part of the record as evidence by the parties if a written hearing is held.

(b) *Verification.* Any facts must be verified, by oath or affirmation before

a person legally authorized to administer oaths or before a person designated by the Secretary for the purpose (except in the case of a statement under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550), by a person who states, in the deposition, affidavit, or statement, that such person has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the deposition, affidavit, or statement, any such person shall be one who would appear as a witness if an oral hearing were held.

(c) *Complainant's evidence.* The complainant shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the complainant may file evidence. What the complainant files in response to that notice shall be served promptly on the respondent.

(d) *Respondent's evidence.* After expiration of the time for the filing of complainant's evidence, the respondent shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the respondent may file evidence. What the respondent files in response to that notice shall be served promptly on the complainant.

(e) *Complainant's rebuttal.* If the respondent files anything pursuant to paragraph (d) of this section, the complainant shall be served with notice of an opportunity to file evidence in rebuttal of what the respondent has filed. Within 20 days after such service, the complainant may file such evidence, which shall be confined strictly to rebuttal of what the respondent has filed. What the complainant files in response to that notice shall be served promptly on the respondent.

(f) *Failure to file.* Failure to file any evidence authorized under this section, within the time prescribed, shall constitute a waiver of the right to file such evidence.

(g) *Extension of time for depositions.* If any party timely files an application for an order for the taking of testimony by deposition pursuant to rule 9, § 202.109, time for the filing of such party's evidence shall be extended as reasonable, to permit consideration of the application, and taking of depositions if ordered.

(h) *Investigation report.* No provision of this rule 13 shall change the status of an investigation report served on the parties and made a part of the record pursuant to rule 4, § 202.104.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990]

#### § 202.114 Rule 14: Post-hearing procedure.

(a) *Oral hearing.* Any party present or represented at an oral hearing, desiring to file any written argument or brief, proposed findings of fact, conclusions, and order, or statement of objections to rulings made by the presiding officer, must so inform the presiding officer at the oral hearing; upon being so informed, the presiding officer shall set a reasonable time for the filing of such documents, and state it on the record at the oral hearing.

(b) *Written hearing.* After filing of the last evidence in a written hearing, notice shall be served on each party that such party may file, within 20 days after such service on such party, written argument of brief, proposed findings or fact, conclusions, and order.

(c) *Service; delay in preparation of report.* If any such document is filed by any party, it shall be served on all other parties. The report shall not be prepared before expiration of such time for filing.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990]

#### § 202.115 Rule 15: Submission for final consideration.

(a) *Report.* The presiding officer, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, shall prepare a report. The report shall be prepared on the basis of the evidence in the record, including the investigation report if one is prepared by the agency head and served on the parties, and any allegations admitted or deemed to be admitted, and any stipulations. The report shall be prepared in the form of a final order for signature by the judicial officer, and shall be filed with the hearing clerk. The report shall not be served on the parties unless and until it is signed by the judicial officer.

(b) *Record.* At the same time as the report is filed with the hearing clerk,